IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5476 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SATISH AMRUTBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SHITAL R PATEL for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/06/2006

CAV JUDGMENT

This petition has been preferred against the order dated 31st December,2004 passed by respondent no.2

- Deputy Collector, Stamp Duty Valuation, Himmatnagar, Dist. Sabarkantha (Annexure "C" to the memo of the petition) and consequential attachment notice dated 15th February,2006 (Annexure “F” to the memo of the petition).

2. Learned advocate for the petitioner submitted that the order dated 31st December,2004 passed by Deputy Collector, Stamp Duty Valuation, Himmatnagar, Dist. Sabarkantha is patently dehors the provisions of the Bombay Stamp (Determination of Market Value of property) Rules,1984 (hereinafter referred to as “the Rules,1984”). No opportunity of hearing has ever been given to the petitioner and ex-parte order has been passed as well as the order is a non-speaking order. The document i.e. Conveyance deed was registered on 22nd February, 2001 at the office of Sub-Registrar, Idar vide registration No.319. The petitioner has purchased the land and paid stamp duty of Rs.6,500/-, whereas the respondent has fixed the deficit stamp duty of the land in question at Rs.42,250/-. There is no discussion in the impugned order as to how the impugned document is covered under Article 36 and not under Article 6 of Schedule-I to the Act,1958 and, hence, the impugned order dated 31st December,2004 (Annexure "C" to the memo of the petition) deserves to be quashed and set aside. The respondent no.2 has not given

any basis for fixation of stamp duty, which is approximately 6 times more stamp duty of the land in question than what is referred in the conveyance deed.

3. Learned Assistant Government Pleader Mr.K.L.Pandya for the respondents submitted that the impugned order passed by the Deputy Collector, Stamp Duty Valuation, Himmatnagar, Dist. Sabarkantha is true, correct and in consonance with the facts of the present case. The stamp duty of the land in question at Rs.42,250/- has been fixed by respondent authority. No Appeal has been preferred against the said order and, so, this Court may not interfere with the order, which is at Annexure "C" to the memo of the petition.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, order dated 31st December,2004 passed by respondent No.2 – Deputy Collector, Stamp Duty Valuation, Himmatnagar, Dist. Sabarkantha (Annexure "C" to the memo of the petition) and consequential attachment notice dated 15th February,2006 (Annexure “F” to the memo of the petition) deserve to be quashed and set aside, mainly for the following facts and reasons:-

(i) Looking to the facts and circumstances of the case, the document, which was executed on 22nd February,2001, for which, the stamp duty was paid by the petitioner as per Article 6 of Schedule I to the Act,1958. Thereafter, on the basis of report made by the office of the Auditor General, it appears that the order was passed by respondent No.2 and the decision has been taken by respondent No.2 that petitioner was liable to make the payment of deficit stamp duty of Rs.42,250/- and penalty of Rs.1,000/-. Looking to the nature of the order, it is a non-speaking order. No reasons have been given by the Deputy Collector, Stamp Duty Valuation, Himmatnagar, Dist. Sabarkantha in his order dated 31st December,2004 as to how the document, which has been executed by the petitioner is covered by Article 36 and not by Article 6 of Schedule-I to the Act,1958.

(ii) The copy of the report made by the Auditor General has not been supplied to the petitioner. What is discussed in the report made by office of Auditor General is not known to the petitioner. Respondent No.2 i.e. Deputy Collector has relied upon the report made by the office of Auditor General without supplying copy to the petitioner. This tantamounts to breach of principle of natural justice.

(iii) Looking to the impugned order at Annexure “C”, Deputy Collector, Stamp Duty Valuation, Sabarkantha has not discussed anything as to how the conveyance was covered under Article 36 and not under Article 6 of Schedule-I to the Act,1958. The paras of the document has been incorporated in the impugned order and it is stated that the Deputy Collector is agreeing with the report given by the office of Auditor General. This is not a reasoning at all. The contentions raised by the petitioner that the property in question was in possession of the petitioner. Thus, it is a simple document of deposit of title deed and not a deed of mortgage. The respondent authority has not discussed anything as to how the impugned document is a deed of mortgage covered by Article 36. There is vast difference between an agreement or memorandum of mortgage by deposit of title deed and a deed of mortgage. As this Court is remanding the matter to the Deputy Collector for his fresh decision. It is not worthwhile to evaluate the document at this stage but suffice it to say that the Deputy Collector ought to give reasoning as to how deed in question is a deed of mortgage and not a agreement an agreement or memorandum of mortgage by deposit of title deeds. As per the petitioner, the impugned order was

never served upon him and, therefore, this petition has been preferred. The petitioner came to know only when notice at Annexure “F” dated 15th February,2006 was received by the petitioner for the recovery of the amount under the Bombay Land Revenue Code,1879.

(iv) Looking to the facts of the present case, no basis has been provided for arriving at higher duty. Reasons always reflect the application of mind of the lower authority. “Reasons” is the soul of the order. If the order is without reasons, the appellate authority cannot appreciate the order passed by the lower authority. Reason keeps arbitrariness away. Only one line reasoning has been that Deputy Collector is agreeing with report given by office of Auditor General. This is non-application of mind. The impugned order is not revealing any reason, how the document is covered by Article 36 and not by Article 6 of Schedule-I to the Act,1958. Though reliance is placed upon report of Auditor General, copy of this document was never supplied to the petitioner.

(v) It appears from the facts of the case that no copy of the Auditor Report was ever supplied to the petitioner. The document upon which the reliance is placed by the respondent ought to be served or supplied

to the petitioner. Non-supply of such type of document upon which the reliance is placed by the respondent tantamounts to violation of principle of natural justice. Looking to the impugned order, the decision taken by the Deputy Collector, Stamp Duty Valuation, Sabarkantha, heavy reliance is placed upon report of Auditor General and, therefore, the copy of such report ought to have been given to the petitioner.

5. As a cumulative effect of the aforesaid facts and circumstances of the case and looking to the judicial pronouncements referred to hereinabove, the order dated 31st December,2004 passed by respondent no.2- Deputy Collector, Stamp Duty Valuation, Himmatnagar, Dist. Sabarkantha is hereby quashed and set aside (Annexure "C" to the memo of the petition) and consequential attachment notice dated 15th February,2006 (Annexure “F” to the memo of the petition) is also hereby quashed and set aside. The matter is remanded to respondent no.2 for taking a fresh decision and for passing a speaking order, as per the Act,1958 read with the Rules,1984, after giving an opportunity of being heard to the petitioner. The parties will be at liberty to make their submissions before respondent authority, which may be dealt with by respondent no.2 while passing the order in accordance

with law. Rule made absolute to the aforesaid extent with no order as to costs.

(D.N.PATEL,J)

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